IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10921 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARUL CHEMICALS LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10921 of 2004
MR DHAVAL SHAH for Petitioner No. 1
MR JITENDRA MALKAN for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 12/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Rule. Learned Standing Counsel Shri Jitendra Malkan waived service of Rule on behalf of the Respondents.

2. The petitioner Parul Chemicals Ltd. has filed this petition and challenged the impugned order of attachment dated 27.8.2004 (Annexure : G), passed by the Superintendent, Central Excise & Customs, Range : III, Divn.4, Vadodara -1, attaching the goods of the petitioner, valued worth Rs.12 lacs.

3. The show cause notice dated 13.5.1996 was issued to the petitioner to which written submissions were filed by the petitioner. Thereafter, the Order in Original dated 20.10.1997 was passed by the Authority, confirming the demand and imposing the penalty of equal amount, against which Appeal was filed before the Commissioner of Central Excise & Customs (Appeals), Vadodara Commissionerate - respondent No.2, which was dismissed on 29.12.1999 for non-compliance with the order of pre-deposit dated 13.7.1999 whereby the petitioner was directed to pay the amount of Rs.5,15,540/- as pre-deposit u/s.35 of the Act. Against which an Appeal was filed by the petitioner before CEGAT, which was allowed on 15.11.2000 and the respondent No.2 was directed to hear the matter without insisting for any pre-deposit. Accordingly, the matter was heard and respondent NO.2, in turn, remanded the matter to the Adjudicating Authority for de-novo adjudication by order dated 24.4.2001.

4. On remand the Additional Commissioner Adjudicating Authority, by his order dated 28.12.2001, issued on 11.1.2002, confirmed the recovery of Rs.5,15,451.80 ps. and also imposed mandatory penalty of the said sum and odd and also ordered payment of interest at the applicable rate (Annexure : A).

5. Aggrieved by the aforesaid order the petitioner had filed Appeal with Stay Application before the respondent No.2 on 15.3.2002. However, the said Stay Application was disposed of by Shri S.S.Bedi, Commissioner (Appeals) - respondent No.2 by his order dated 18.9.2002 directing the petitioner to deposit Rs.5,15,41/- as pre-deposit (Annexure : B). It appears that on receiving the said Stay Order dated 18.9.2002 the petitioner submitted Misc. Application dated 3.10.2002 for modification of the Stay order dated 18.9.2002, which

is not annexed to this petition. Be that as it may. However, the order passed on that Miscellaneous Application dated 3.10.2002 is annexed at Annexure : C. By the said order dated 9.10.2002 (Annexure : C) the same Commissioner (Appeals) Shri S.S.Bedi, dismissed the Miscellaneous Application of the petitioner by directing it to pre-deposit u/s.35-E as ordered in the Stay order, within 15 days from the date of the receipt of the order, failing which the Appeal was ordered to be decided, in accordance with law.

6. It is stated in Para : 9 of this petition that being seriously aggrieved with the impugned refusal by the respondent No.2 to reconsider the matter the petitioner made another representation on 21.10.2002 (Annexure : D), which was accepted by the respondent No.2 and without insisting for any pre-deposit the Appeal, filed by the petitioner, against the order dated 28.12.2001, was taken up for hearing on 10.11.2003. Pursuant to the notice for hearing, issued by the respondent No.2, on 27.10.2003 (Annexure : E), the representative of the petitioner attended the hearing of Appeal which was concluded on that day. However, no orders were passed thereafter for a considerable time, therefore, the petitioner addressed a letter dated 16.3.2004 to the Assistant Commissioner of Central Excise & Customs, reminding the authority that the hearing has been concluded and no order on the Appeal has been received so far (Annexure : F).

7. It is the case of the petitioner that though its Appeal was heard way back on 10.11.2003, the Appellate Authority - respondent NO.2 has not finally decided the same and all of a sudden i.e. on 27.8.2004 the respondent No.3 attached the goods of the petitioner, valued at Rs.12 lacs, vide order of Attachment (Annexure : G) and threatened the petitioner that if the dues were not paid within 15 days of the order then the goods will be sold by auction. Hence, this petition.

8. We find from the order-sheet of this petition that when this petition was placed on 3.9.2004, for the first time, for hearing of admission and orders before the Division Bench of this Court (Coram : M.S.Shah & D.A. Mehta, JJ.), the submission was made by the learned Counsel for the petitioner that the petitioner's Application dated 21.10.2002 for modification of the Stay Order dated 18.9.2002 was still pending and even after their reminder their Stay Application was not heard, but the Appellate Authority issued the Notice of hearing on Appeal on 10.11.2003 and the matter was heard on that

date, but the orders were awaited in the Appeal. Considering the other submissions the Division Bench of this Court, while issuing the Notice, granted Ad.interim stay of the order dated 27.8.2004 (Annexure : G) to the petitioner, subject to the condition that the petitioner shall maintain the stock of finished goods/raw-materials of the aggregate value of Rs.6 lacs at any given point of time. Thereafter, when this petition was placed before this Court on 29.1.2004, learned Counsel Shri Joshi for the petitioner had stated that his Appeal was heard by the respondent No.2, but the order was awaited. Mean while the attachment order came to be passed which was challenged in this petition and this Court has stayed the said order on certain condition. Shri Malkan for the respondents prayed for time to file Reply Affidavit and the time, as prayed for, was granted and the matter was placed on today i.e. 12.10.2004.

9. It was submitted by the learned Counsel for the petitioner that the respondent No.2, without deciding the Stay Application of the petitioner, heard the Appeal long back i.e. on 10.11.2003 and thereafter not deciding it. Therefore, the impugned order of attachment (Annexure:G) passed by the respondent No.3 is wholly illegal and liable to be quashed and set aside.

10. There is no substance in this submission made by the learned Counsel for the petitioner. It may be stated that the Stay Application, filed in Appeal by the petitioner, was finally decided on 18.9.2002 by Shri S.S.Bedi, Commissioner (Appeals), whereby the petitioner was directed to deposit Rs.5,15,451/- as pre-deposit u/s.35-F of the Central Excise Act, 1944, within two weeks from the date of receipt of the order and report compliance within 3 weeks, failing which the Appeal was liable to be dismissed for non-compliance of the provision of Section 35-F of the Central Excise Act, 1944. On compliance, stay of recovery of mandatory penalty was granted till the final disposal of the Appeal. On receiving this pre-deposit order dated 18.9.2002, passed by the respondent No.2, the petitioner submitted Miscellaneous Application dated 3.10.2002 for modification of the same before the respondent No.2 which was also dismissed by the respondent by his order dated 9.10.2002 (Annexure : C). But, the petitioner persisted with the matter this time through its Advocate Shri Yogin B.Mahadevia, who by his letter dated 21.10.2002, addressed to the Commissioner, Central Excise & Customs (Appeals), Vadodara Commissionerate, requested for modification of the Stay Order (Annexure : D). Apart from the fact that this Course is totally unknown and not

permissible under the Law, we find that letter/ Application dated 21.10.2002 (Annexure : D) submitted by Advocate Shri Mahadevia of the petitioner shows that it was in the nature of further written submissions in connection with the Miscellaneous Application dated 30.10.2002 which was already dismissed by the respondent No.2 by his impugned order dated 9.10.2002 (Annexure : C). Therefore, there is no question of taking any decision on such Application by the respondent No.2. It seems that under the wrong premise and misconception the submission made before this Court that even after the petitioner's reminder the Stay Application was not heard by the Authority and the Notice dated 27.10.2002 was issued for hearing on 10.11.2003, on which date the Appeal was heard, but no order on it passed so far.

11. It is true that by letter dated 27.10.2003 the Superintendent (Appeals), Central Excise & Customs, Surat, informed the petitioner to remain present for personal hearing on 10.11.2003 at 11.10 hrs. before the Commissioner (Appeals), Central Excise & Customs, Surat, but thereafter no further order is passed on the said Appeal. However, as stated earlier, for non-compliance of the pre-deposit order dated 18.9.2002 (Annexure : B) the Appeal was liable to be dismissed for non-compliance of the stay order u/s.35-F of the Central Excise Act, 1944. Perhaps, because of that no formal order of dismissing the Appeal is passed by the respondent No.2 in this matter so far.

12. Under the aforesaid circumstances, in absence of any valid order passed in favour of the petitioner, if the respondent No.3 passed the impugned order dated 27.8.2004 (Annexure : G) of attachment of goods then no fault can be found with such orders by this Court in its writ jurisdiction.

13. In view of the above discussion, this Appeal fails and is hereby dismissed. Ad.interim relief granted earlier stands vacated forthwith. Rule discharged. No order as to costs.

(B.J.Shethna, J.)
Date : October 12, 2004
(Sharad D.Dave, J.)

sas